



Sen. Ram Villivalam

Filed: 2/23/2022

10200SB2981sam003

LRB102 21866 RJT 36848 a

1 AMENDMENT TO SENATE BILL 2981

2 AMENDMENT NO. _____. Amend Senate Bill 2981 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Innovations for Transportation Infrastructure Act.

6 Section 5. Legislative policy.

7 (a) It is the public policy of the State of Illinois to
8 promote the development of infrastructure projects that serve
9 the needs of the public.

10 (b) The design-build project delivery method and
11 Construction Manager/General Contractor project delivery
12 method and use of Alternative Technical Concepts have the
13 potential to capture private sector innovation and safely
14 deliver infrastructure projects on more predictable schedules
15 and budgets. Earlier completion and lower cost for projects
16 are possible with the ability to shift or share risks with the

1 private sector that are generally retained by the public in
2 the conventional design-bid-build project delivery method.

3 (c) It is the intent of the General Assembly that the
4 Department of Transportation and the Illinois State Toll
5 Highway Authority may evaluate and use Alternative Technical
6 Concepts proposed by bidders and proposers and to use the
7 design-build project delivery method and Construction
8 Manager/General Contractor project delivery method.

9 (d) It is the intent of this Act to use design
10 professionals, construction companies, and workers from this
11 State, reflecting the diversity of the State's businesses and
12 workforce, to the greatest extent possible.

13 (e) Except as otherwise provided in this Act, the powers
14 granted in this Act are in addition to any other powers
15 authorized under applicable law.

16 Section 10. Definitions. As used in this Act:

17 "Alternative Technical Concepts" means a proposed
18 deviation from the contract requirements set forth in the
19 procurement documents for a transportation facility that
20 offers a solution that is equal to or better than the
21 requirements in the procurement documents.

22 "Authority" means the Illinois State Toll Highway
23 Authority.

24 "Best value" means any selection process in which
25 proposals contain both price and qualitative components and

1 award is based upon a combination of price, qualitative
2 concepts, and other factors.

3 "Chief procurement officer" means the chief procurement
4 officer for the Transportation Agency.

5 "Construction Manager/General Contractor" means a proposer
6 that has entered into a Construction Manager/General
7 Contractor contract under this Act.

8 "Construction Manager/General Contractor contract" means a
9 two-phase contract between the Transportation Agency and a
10 Construction Manager/General Contractor that includes a first
11 phase addressing preconstruction services and a second phase
12 addressing the construction of the transportation facility.

13 "Construction Manager/General Contractor project delivery
14 method" means a method of procurement and contracting that
15 makes a Construction Manager/General Contractor who enters
16 into a contract with the Transportation Agency responsible for
17 certain preconstruction services and then, if the parties
18 reach agreement on key terms, responsible for construction of
19 the transportation facility.

20 "Department" means the Illinois Department of
21 Transportation.

22 "Design-bid-build project delivery method" means the
23 traditional method of procuring and contracting for design
24 services and construction services used separately in this
25 State that incorporates the Architectural, Engineering, and
26 Land Surveying Qualifications Based Selection Act and the

1 principles of competitive bidding under the Illinois
2 Procurement Code.

3 "Design-build contract" means a contract between the
4 Transportation Agency and a design-builder under which the
5 design-builder agrees to furnish architectural, surveying,
6 engineering, construction, and related services for a
7 transportation facility, and may include, but is not limited
8 to, the progressive design-build project delivery method.

9 "Design-build project delivery method" means a method of
10 procurement and contracting that provides responsibility
11 within a single contract between the Transportation Agency and
12 a design-builder for the furnishing of architectural,
13 surveying, engineering, construction, and related services for
14 a transportation facility.

15 "Design-builder" means a proposer that has entered into a
16 design-build contract with the Transportation Agency under
17 this Act.

18 "Evaluation Committee" means the committee assembled to
19 evaluate and score statements of qualifications and proposals.

20 "Evaluation criteria" means the standards and requirements
21 established by the Transportation Agency against which the
22 qualifications and proposals of a proposer will be assessed
23 during the procurement of a design-build contract or
24 Construction Manager/General Contractor contract, as
25 applicable.

26 "Executive Director" means the Executive Director of the

1 Illinois State Toll Highway Authority.

2 "Metropolitan planning organization" means a metropolitan
3 planning organization under 23 U.S.C. 134 whose metropolitan
4 planning area boundaries are partially or completely within
5 this State.

6 "Preconstruction services" means all
7 non-construction-related services that a Construction
8 Manager/General Contractor is required to perform during the
9 first phase of a Construction Manager/General Contractor
10 contract, and may include, but is not limited to, giving
11 advice to the Transportation Agency regarding scheduling, work
12 sequencing, cost engineering, constructability, cost
13 estimating, and risk identification.

14 "Progressive design-build project delivery method" is a
15 type of design-build project delivery method that consists of
16 2 phases, with the first phase including budget-level design
17 development, preconstruction services, and negotiation of a
18 contract price (either lump sum or guaranteed maximum price).
19 After completion of the first phase, the second phase is
20 begun. The second phase consists of final design,
21 construction, and commissioning of the project.

22 "Proposal" means a proposer's response to a request for
23 proposals.

24 "Proposer" means any individual, sole proprietorship,
25 firm, partnership, joint venture, corporation, professional
26 corporation, or other entity legally established to conduct

1 business in this State that proposes to be the design-builder
2 or Construction Manager/General Contractor for any
3 transportation facility under this Act.

4 "Qualifications" means a statement of qualifications
5 submitted by a proposer in response to a request for
6 qualifications.

7 "Request for proposals" means the document issued by the
8 Transportation Agency to solicit proposals and describe the
9 procurement process for a design-build contract or
10 Construction Manager/General Contractor contract in accordance
11 with the design-build project delivery method or the
12 Construction Manager/General Contractor project delivery
13 method, as applicable.

14 "Request for qualifications" means the document issued by
15 the Transportation Agency in the first phase of a two-phase
16 procurement to solicit qualifications from proposers in
17 accordance with the design-build project delivery method or
18 the Construction Manager/General Contractor project delivery
19 method, as applicable.

20 "Scope and performance requirements" means the activities,
21 constructed elements, and standards of performance the
22 Transportation Agency requires the design-builder or the
23 Construction Manager/General Contractor to comply with in the
24 development of the transportation facility, and may include,
25 but is not limited to, the intended usage, capacity, size,
26 scope, quality and performance standards, life-cycle costs,

1 preliminary engineering, design, and other requirements as
2 developed and determined by the Transportation Agency.

3 "Secretary" means the Secretary of the Illinois Department
4 of Transportation.

5 "Transportation Agency" means the Illinois Department of
6 Transportation or the Illinois State Toll Highway Authority.

7 "Transportation facility" means any new or existing
8 facility or group of facilities that are the subject of a
9 design-build contract or a Construction Manager/General
10 Contractor contract, and includes highways, roads, bridges,
11 tunnels, overpasses, bus ways, guideways, ferries, airports or
12 other aviation facilities, public transportation facilities,
13 vehicle parking facilities, port facilities, rail facilities,
14 stations, hubs, terminals, intermodal facilities, transit
15 facilities, or similar facilities used for the transportation
16 of persons or goods, together with any buildings, structures,
17 parking areas, appurtenances, intelligent transportation
18 systems, and other property or facilities related to the
19 operation or maintenance of these facilities.

20 Section 15. Authorization of project delivery methods.

21 (a) Notwithstanding any other law, and as authority
22 supplemental to its existing powers, except as otherwise
23 provided for in this Act, the Transportation Agency, in
24 accordance with this Act, may use the design-build project
25 delivery method for transportation facilities if the capital

1 costs for transportation facilities delivered utilizing the
2 design-build project delivery method or Construction
3 Manager/General Contractor project delivery method or
4 Alternative Technical Concepts in a design-bid-build project
5 delivery method do not: (i) for transportation facilities
6 delivered by the Department, exceed \$400 million of contracts
7 awarded during the Department's multi-year highway improvement
8 program for any 5-year period; or (ii) for transportation
9 facilities delivered by the Authority, exceed 20% of the
10 Authority's annual improvement program. The Transportation
11 Agency shall make this calculation before commencing the
12 procurement. Notwithstanding any other law, and as authority
13 supplemental to its existing powers, the Department, in
14 accordance with this Act, may use the Construction
15 Manager/General Contractor project delivery method for up to 2
16 transportation facilities per year. Before commencing a
17 procurement under this Act for either a design-build contract
18 or a Construction Manager/General Contractor contract, the
19 Transportation Agency shall first undertake an analysis and
20 make a written determination that it is in the best interests
21 of this State to use the selected delivery method for that
22 transportation facility. The analysis and determination shall
23 discuss the design-build project delivery method or
24 Construction Manager/General Contractor project delivery
25 method's impact on the anticipated schedule, completion date,
26 and project costs. The best interests of the State analysis

1 shall be made available to the public.

2 (b) The Transportation Agency shall report to the General
3 Assembly annually for the first 5 years after the effective
4 date of this Act on the progress of procurements and
5 transportation facilities procured under this Act.

6 (c) A contract entered into pursuant to the provisions of
7 this Act are excepted from the Public Contract Fraud Act.

8 Section 20. Preconditions to commencement of procurement.

9 If the Transportation Agency determines to use the
10 design-build project delivery method or the Construction
11 Manager/General Contractor project delivery method for a
12 particular transportation facility, the Transportation Agency
13 may not commence a procurement for the transportation facility
14 until the Transportation Agency has satisfied the following
15 requirements:

16 (1) the Transportation Agency does one of the following:

17 (A) the Transportation Agency includes the
18 transportation facility in the Transportation Agency's
19 respective multi-year highway improvement program and
20 designates it as a design-build project delivery method
21 project or Construction Manager/General Contractor
22 project;

23 (B) the Transportation Agency issues a notice of
24 intent to receive qualifications, that includes a
25 description of the proposed procurement and transportation

1 facility, at least 28 days before the issuance of the
2 request for qualifications, and for a Department-issued
3 notice of intent publishes the notice in the Illinois
4 Transportation Procurement Bulletin and for an
5 Authority-issued notice of intent publishes the notice in
6 the Illinois Procurement Bulletin; or

7 (C) for a single-phase procurement authorized under
8 subsection (a) of Section 25 of this Act, the
9 Transportation Agency issues a notice of intent to receive
10 proposals, that includes a description of the proposed
11 procurement and transportation facility, at least 14 days
12 before the issuance of the request for proposals, and for
13 a Department-issued notice of intent publishes the notice
14 in the Illinois Transportation Procurement Bulletin and
15 for an Authority-issued notice of intent publishes the
16 notice in the Illinois Procurement Bulletin; and

17 (2) the Transportation Agency uses its best efforts to
18 ensure that the transportation facility is consistent with the
19 regional plan in existence at the time of any metropolitan
20 planning organization in which the boundaries of the
21 transportation facility is located, or any other
22 publicly-approved plan.

23 Section 25. Procurement process.

24 (a) The Transportation Agency may solicit a proposer with
25 which to enter into a design-build contract or Construction

1 Manager/General Contractor contract, as applicable, by using,
2 without limitation, one or more requests for qualifications, a
3 shortlisting of the most highly qualified proposers, requests
4 for proposals, and negotiations. The Transportation Agency
5 shall use a two-phase procurement for a design-build contract
6 to select the successful proposer, except that the
7 Transportation Agency may use a single-phase procurement if
8 the transportation facility is estimated to cost less than
9 \$5,000,000 or the Secretary or the Executive Director makes a
10 written determination that the Transportation Agency may use a
11 single-phase procurement for a particular transportation
12 facility. In a two-phase procurement, the Transportation
13 Agency shall use the first phase to evaluate and shortlist the
14 most highly qualified proposers based on a proposer's
15 qualifications, and then use the second phase to evaluate and
16 select a proposer based on proposals submitted by the
17 shortlisted proposers. During the first phase of a two-phase
18 procurement, the Transportation Agency shall not consider
19 price proposals to make its shortlist decision. In a
20 single-phase procurement, the Transportation Agency shall
21 solicit proposers with a request for proposals, and shall
22 evaluate and select a proposer based on those proposals.

23 (b) The request for qualifications may contain any terms
24 deemed appropriate by the Transportation Agency including,
25 without limitation, the following:

26 (1) a description of the anticipated scope of work for

1 the transportation facility;

2 (2) a requirement that the proposer identify certain
3 key personnel, and for design-build contracts certain key
4 firms, the experience of the personnel and firms, and the
5 conditions on which identified personnel and firms can be
6 replaced;

7 (3) the evaluation criteria for the qualifications and
8 the relative importance of those criteria; these
9 evaluation criteria may address, without limitation, the
10 proposer's technical and financial qualifications, such as
11 specialized experience, technical competence, capability
12 to perform, financial capacity, the proposer's workload,
13 local office presence, past performance including the
14 proposer's safety record and record of utilization of
15 business enterprises, including disadvantaged business
16 enterprises, and any other qualifications-based factors;

17 (4) the Transportation Agency's prequalification,
18 licensing, and registration requirements, including any
19 requirements from the Professional Engineering Practice
20 Act of 1989, the Illinois Architecture Practice Act of
21 1989, the Structural Engineering Practice Act of 1989, and
22 the Illinois Professional Land Surveyor Act of 1989,
23 except that nothing contained herein precludes the
24 Transportation Agency's use of additional prequalification
25 criteria or pass-fail evaluation factors addressing
26 minimum levels of technical experience or financial

1 capabilities;

2 (5) a requirement that the proposer provide references
3 or contact information for persons who can attest to the
4 past performance of the proposer, including with respect
5 to successful project delivery, subcontracting, labor
6 relations, diverse business utilization, workforce
7 diversity, and compliance with contract requirements;

8 (6) the maximum number of proposers the Transportation
9 Agency will shortlist to submit proposals; and

10 (7) any other relevant information the Transportation
11 Agency deems appropriate.

12 (c) Upon completion of the qualifications evaluation, the
13 Transportation Agency shall, based on the evaluation criteria
14 set forth in the request for qualifications, create a
15 shortlist of the most highly qualified proposers. The
16 Transportation Agency shall shortlist no more than 5 and no
17 fewer than 2 of the most highly qualified proposers.
18 Notwithstanding other provisions of this subsection (c), the
19 Transportation Agency may shortlist fewer than 2 proposers if
20 the Secretary or the Executive Director makes a finding that
21 an emergency situation justifies the limited shortlisting and
22 fewer than 2 proposers meet any applicable prequalification or
23 pass-fail requirements set forth in the request for
24 qualifications.

25 (d) The request for proposals may contain any terms deemed
26 appropriate by the Transportation Agency including, without

1 limitation, the following:

2 (1) the form and amount of required bid security;

3 (2) the terms of the design-build contract or
4 Construction Manager/General Contractor contract,
5 including, but not limited to, scope and performance
6 requirements, schedule or completion date requirements,
7 subcontractor requirements, payment and performance
8 security requirements, and insurance requirements;

9 (3) the requirements for the technical component of
10 the proposal, including a description of the level of
11 design, scope and type of renderings, drawings, and
12 specifications to be provided in the proposals;

13 (4) the requirements for the price component of the
14 proposal, which for Construction Manager/General
15 Contractor contracts may include a requirement for the
16 proposer to submit a lump sum price for the direct costs to
17 perform the required preconstruction services and
18 percentage mark-up on those direct costs;

19 (5) the evaluation criteria for the proposals,
20 including technical criteria, innovation, and schedule,
21 and the relative importance of those criteria, as the
22 Transportation Agency deems appropriate;

23 (6) a process for the Transportation Agency to review
24 and accept Alternative Technical Concepts;

25 (7) requirements regarding utilization of business
26 enterprises, including disadvantaged business

1 enterprises, and workforce development, including a
2 description of utilization and workforce diversity plans
3 and certifications to be provided in the proposals for
4 both design and construction phases;

5 (8) requirements regarding the proposer's
6 qualifications; and

7 (9) any other relevant information the Transportation
8 Agency deems appropriate.

9 (e) Before the proposers' submittal of proposals, the
10 Transportation Agency may conduct confidential meetings and
11 exchange confidential information with proposers to promote
12 understanding of the request for proposals, review Alternative
13 Technical Concepts, or discuss other issues related to the
14 procurement.

15 (f) The date proposals are due must be at least 28 calendar
16 days after the date the Transportation Agency first issues the
17 request for proposals.

18 (g) The Transportation Agency may offer to pay a stipend
19 in an amount and on the terms and conditions determined by the
20 Transportation Agency and as set forth in the request for
21 proposals to: (1) all shortlisted proposers if the
22 Transportation Agency cancels the procurement after the
23 proposals have been released, but before the due date for
24 proposals; or (2) each unsuccessful proposer that submits a
25 responsive proposal; or (3) each member of the proposer team
26 that incurs costs in the preparation of the proposal. The

1 Transportation Agency may pay a stipend only to those
2 proposers who grant to the Transportation Agency the right to
3 use any work product contained in the unsuccessful proposer's
4 proposal and other proposal-related submissions or, if the
5 Transportation Agency cancels the procurement after the
6 proposals have been released, but before the due date for
7 proposals, any work product developed before cancellation,
8 including technologies, techniques, methods, processes, and
9 information contained in the recipient's design for the
10 transportation facility.

11 (h) The Transportation Agency shall, as appropriate
12 depending on whether the transportation facility includes
13 building facilities, directly employ or retain a professional
14 engineer or engineers licensed in this State or a licensed
15 architect or architects, or both engineers licensed in this
16 State and licensed architects, to prepare the scope and assist
17 in the evaluation of the proposals' technical submissions
18 under a design-build project delivery method. The professional
19 engineers and licensed architects performing these services
20 are precluded from participating in the procurement of the
21 transportation facility at issue as a member of a proposer
22 team.

23 (i) The Transportation Agency has the right to reject any
24 and all qualifications or proposals, including, but not
25 limited to, the right to reject any qualifications or
26 proposals as non-responsive, if, in the Transportation

1 Agency's sole discretion, the qualifications or proposals do
2 not meet all material requirements of the request for
3 qualifications or request for proposals, as appropriate. The
4 Transportation Agency shall not consider a proposal that does
5 not include:

6 (1) the proposer's plan to comply with requirements
7 established by the Transportation Agency regarding
8 utilization of business enterprises, including
9 disadvantaged business enterprises; or

10 (2) bid security in the form and amount designated in
11 the request for proposals.

12 (j) The Transportation Agency shall consult with the
13 appropriate chief procurement officer on the design-build
14 project delivery method and the Construction Manager/General
15 Contractor project delivery method procurement processes, and
16 the Secretary or the Executive Director, in consultation with
17 the chief procurement officer, shall determine which
18 procedures to adopt and apply to the design-build project
19 delivery method and Construction Manager/General Contractor
20 project delivery method procurement processes in order to
21 ensure an open, transparent, and efficient process that
22 accomplishes the purposes of this Act.

23 (k) To ensure taxpayer accountability, for any project
24 with an estimated cost over \$30,000,000, the Transportation
25 Agency shall independently procure an owner's representative
26 or construction manager to supplement staff directly employed

1 by the Transportation Agency, provide design reviews,
2 constructability reviews, construction acceptance, oversight
3 of utility relocations, independent quality assurance surveys,
4 independent material testing, documentation of construction,
5 risk mitigation, and oversight of construction activities,
6 including construction management, maintenance of traffic,
7 permit compliance, and other services which may include: value
8 engineering, stakeholder coordination, or public involvement
9 management.

10 Section 30. Evaluation committee.

11 (a) The Transportation Agency shall establish one or more
12 evaluation committees to assist in selecting a design-builder
13 and a Construction Manager/General Contractor. The
14 Transportation Agency, in its sole discretion, shall determine
15 the appropriate size and composition of the evaluation
16 committee; however, at least half of the committee must be
17 licensed professional engineers.

18 (b) The Transportation Agency may establish an evaluation
19 committee for a set term or for the procurement of a particular
20 transportation facility.

21 (c) Once the Transportation Agency identifies the
22 proposers for a transportation facility, each member of an
23 evaluation committee must certify that no conflict of interest
24 exists between the member and the proposers. If the
25 Transportation Agency, after consultation with the chief

1 procurement officer, determines that an actual conflict
2 exists, the member shall not participate on the evaluation
3 committee for that procurement and the Transportation Agency
4 shall appoint a replacement member on either a permanent or a
5 temporary basis.

6 Section 35. Procedures for selection.

7 (a) The Transportation Agency shall review, evaluate,
8 score, and rank proposals and determine which proposal offers
9 the best value to the public based on the evaluation criteria
10 set forth in the request for proposals. The Transportation
11 Agency shall award the contract based on this determination.
12 Notwithstanding other provisions of this Section, if for any
13 reason the proposer awarded the contract is unable or
14 unwilling to execute the contract, including the failure of
15 the proposer and the Transportation Agency to successfully
16 complete negotiations, if any, of the contract, the
17 Transportation Agency may award the contract to the proposer
18 whose proposal the Transportation Agency determines offers the
19 public the next best value.

20 (b) After a response to a request for qualifications or a
21 request for proposals has been submitted as provided in
22 Section 25, a design-builder shall not replace, remove, or
23 otherwise modify any firm identified as a member of the
24 proposer team unless authorized to do so by the Transportation
25 Agency.

1 Section 40. Project records; confidentiality; public
2 disclosure.

3 (a) The Transportation Agency shall maintain all written
4 decisions, qualification and proposal evaluations, scoring
5 documents, selection evaluations, proposals, and procurement
6 documents in a procurement file maintained by the
7 Transportation Agency.

8 (b) A proposer may identify those portions of a proposal
9 or other submission that the proposer considers to be trade
10 secrets or confidential, commercial, financial, or proprietary
11 information. Confidential and proprietary information,
12 including trade secrets, shall be exempt from disclosure only
13 if the proposer does the following:

14 (1) requests exclusion from disclosure upon submission
15 of the information or other materials for which protection
16 is sought;

17 (2) identifies the data or other materials for which
18 protection is sought;

19 (3) states the statutory or regulatory basis for the
20 protection;

21 (4) fully complies with the federal Freedom of
22 Information Act and any other applicable provisions of
23 State law, including, but not limited to, the Freedom of
24 Information Act, with respect to information the proposer
25 contends should be exempt from disclosure; and

1 (5) certifies if the information is in accordance with
2 the protection of the Illinois Trade Secrets Act.

3 (c) Notwithstanding any other provision of law, in order
4 to properly balance the need to maximize competition under
5 this Act with the need to create a transparent procurement
6 process, the qualifications, proposals, and other information
7 and documents submitted by proposers and the Transportation
8 Agency's evaluation records shall not be subject to release or
9 disclosure by the Transportation Agency until execution of the
10 design-build contract or Construction Manager/General
11 Contractor contract, as applicable. If the Transportation
12 Agency terminates the procurement for a transportation
13 facility, the exemption from release or disclosure under this
14 Section shall remain in place until the Transportation Agency
15 re-procures the transportation facility and has entered into a
16 design-build contract or Construction Manager/General
17 Contractor contract, as applicable. However, this exemption
18 shall lapse if the Transportation Agency does not commence the
19 re-procurement of the transportation facility within 5 years
20 of the termination.

21 Section 45. Design-build contract. A design-build contract
22 may include any provisions the Transportation Agency
23 determines are necessary or appropriate, including, but not
24 limited to, provisions regarding the following:

25 (1) compensation or payments to the design-builder;

1 (2) grounds for termination of the design-build
2 contract, including the Transportation Agency's right to
3 terminate for convenience;

4 (3) liability for damages and nonperformance;

5 (4) events of default and the rights and remedies
6 available to the design-builder and the Transportation
7 Agency in the event of a default or delay;

8 (5) the identification of any technical specifications
9 that the design-builder must comply with when developing
10 plans or performing construction work;

11 (6) the procedures for review and approval of the
12 design-builder's plans;

13 (7) required performance and payment security;

14 (8) the terms and conditions of indemnification and
15 minimum insurance requirements; and

16 (9) any other terms and conditions the Transportation
17 Agency deems necessary.

18 Section 50. Construction Manager/General Contractor
19 contract.

20 (a) The Construction Manager/General Contractor contract
21 shall divide the Construction Manager/General Contractor
22 services into 2 phases. The first phase shall address
23 preconstruction services and the procedures the parties shall
24 follow to finalize the contract terms for the second phase.
25 The second phase shall address the Construction

1 Manager/General Contractor's construction of the
2 transportation facility for a lump sum or a guaranteed maximum
3 price.

4 (b) A Construction Manager/General Contractor contract
5 shall include provisions regarding the following:

6 (1) the Construction Manager/General Contractor's
7 provision of preconstruction services during the first
8 phase of the contract, including the Construction
9 Manager/General Contractor's compensation for those
10 services;

11 (2) a requirement that, during the first phase of the
12 contract, the Construction Manager/General Contractor
13 shall use a competitive bidding process to procure
14 subcontracts for at least the minimum percentage of
15 construction work specified in the request for proposals,
16 provided that:

17 (A) compliance with this requirement shall be
18 based on an estimated cost for the construction work
19 approved by the Transportation Agency before the start
20 of the competitive bidding process; and

21 (B) the Construction Manager/General Contractor
22 may not use subcontracts with its wholly or partially
23 owned subsidiaries, parent companies, or affiliates to
24 satisfy this obligation;

25 (3) the process the Transportation Agency and the
26 Construction Manager/General Contractor shall use to

1 determine a lump sum or guaranteed maximum price for the
2 construction work, including a requirement that the
3 Transportation Agency conduct an independent cost estimate
4 for the construction work; and

5 (4) grounds for termination of the Construction
6 Manager/General Contractor contract, including the
7 Transportation Agency's right to terminate the contract
8 and not proceed with the construction phase of the project
9 if the Transportation Agency and the Construction
10 Manager/General Contractor are unable to negotiate a lump
11 sum or guaranteed maximum price for the construction work.

12 (c) In addition to the provisions under subsection (b) of
13 this Section, a Construction Manager/General Contractor
14 contract may include any other provisions the Transportation
15 Agency determines are necessary or appropriate, including, but
16 not limited to, provisions regarding the following:

17 (1) liability for damages and nonperformance;

18 (2) events of default and the rights and remedies
19 available to the Construction Manager/General Contractor
20 and the Transportation Agency in the event of a default or
21 delay;

22 (3) the identification of any technical specifications
23 that the Construction Manager/General Contractor must
24 comply with when aiding the Transportation Agency with
25 developing plans or performing construction work;

26 (4) required performance and payment security for the

1 construction phase of the contract;

2 (5) the terms and conditions of indemnification and
3 minimum insurance requirements; and

4 (6) any other terms and conditions the Transportation
5 Agency deems necessary.

6 (d) If the Construction Manager/General Contractor
7 contract is terminated for any reason, the Transportation
8 Agency, in its sole discretion, may readvertise the
9 Construction Manager/General Contractor contract under this
10 Act or use any other authorized procurement method to complete
11 the transportation facility or any portion of the
12 transportation facility. Once the contract is terminated, the
13 Transportation Agency may use any work product developed by
14 the Construction Manager/General Contractor to complete the
15 transportation facility.

16 Section 55. Funding and financing.

17 (a) The Transportation Agency may use any lawful source of
18 funding and financing to compensate a design-builder and
19 Construction Manager/General Contractor for work and services
20 performed under a design-build contract or Construction
21 Manager/General Contractor contract, as applicable, and the
22 Transportation Agency may combine federal, State, local, and
23 private funds to finance a transportation facility. Any
24 Transportation Agency that administers a construction program
25 for which federal law or regulations establish standards and

1 procedures for the utilization of minority-owned and
2 women-owned businesses and disadvantaged businesses shall
3 implement a disadvantaged business enterprise program to
4 include minority-owned and women-owned businesses and
5 disadvantaged businesses, using the federal standards and
6 procedures for the establishment of goals and utilization
7 procedures for the State-funded, as well as the federally
8 assisted, portions of the program. In cases of federal funding
9 or federally assisted projects, these goals shall not exceed
10 those established pursuant to the relevant and applicable
11 federal statutes or regulations.

12 (b) Subject to appropriation by the General Assembly of
13 the required amounts, the Transportation Agency may obligate
14 and make expenditures of funds as and when needed to satisfy
15 its payment obligations under a design-build contract or
16 Construction Manager/General Contractor contract.

17 Section 56. Utilization requirements.

18 (a) Design-builder and Construction Manager/General
19 Contractor projects shall comply with Section 2-105 of the
20 Illinois Human Rights Act and all applicable laws and rules
21 that establish standards and procedures for the utilization of
22 minority, disadvantaged, and women-owned businesses,
23 including, but not limited to, the Business Enterprise for
24 Minorities, Women, and Persons with Disabilities Act. Any
25 Transportation Agency that administers a construction program,

1 for which federal law or regulations establish standards and
2 procedures for the utilization of minority-owned and
3 women-owned businesses and disadvantaged businesses shall
4 implement a disadvantaged business enterprise program to
5 include minority-owned and women-owned businesses and
6 disadvantaged businesses, using the federal standards and
7 procedures for the establishment of goals and utilization
8 procedures for the State-funded, as well as the federally
9 assisted, portions of the program. In cases of federal funding
10 or federally assisted projects, these goals shall not exceed
11 those established pursuant to the relevant and applicable
12 federal statutes or regulations. Each design-build contract
13 and Construction Manager/General Contractor contract shall
14 include remedies for a contractor's failure to comply with
15 commitments made in the proposal or utilization plan,
16 including, without limitation, failure to cooperate in
17 providing information regarding compliance or termination of
18 any subcontractor identified in the utilization plan without
19 the consent of the Transportation Agency. Such remedies may
20 include termination of the contract, imposition of a penalty
21 in an amount equivalent to any profit or cost savings accruing
22 to the contractor as a result of the violation, withholding of
23 payments, liquidated damages, disqualification from future
24 bidding as non-responsible, or any other remedy available to
25 the Transportation Agency at law or in equity.

26 (b) For the purposes of this Section, aspirational goals

1 compliant with the Business Enterprise for Minorities, Women,
2 and Persons with Disabilities Act and Disadvantaged Business
3 Enterprise Program shall be established separately for
4 construction-related professional services and shall be
5 consistent with the Transportation Agency's methodology for
6 design-bid-build contracts. As used in this Section,
7 "construction-related professional services" means those
8 services within the scope of the practice of architecture,
9 professional engineering, structural engineering, or land
10 surveying, as defined in the Illinois Architecture Practice
11 Act of 1989, the Professional Engineering Practice Act of
12 1989, the Illinois Professional Land Surveyor Act of 1989, or
13 the Illinois Structural Engineering Practice Act of 1989.

14 Section 57. Labor.

15 (a) A contract or agreement under this Act shall require
16 the design-builder or Construction Manager/General Contractor,
17 and all subcontractors, to comply with Section 30-22 of the
18 Illinois Procurement Code as it applies to responsible bidders
19 and to present satisfactory evidence of that compliance to the
20 Transportation Agency, unless the transportation project is
21 federally funded and the application of those requirements
22 would jeopardize the receipt or use of federal funds in
23 support of the transportation project.

24 (b) A contract or agreement under this Act shall require
25 the design-builder or Construction Manager/General Contractor

1 to enter into a project labor agreement used by the
2 Transportation Agency.

3 (c) This Section does not apply to construction-related
4 professional services. As used in this Section,
5 "construction-related professional services" means those
6 services within the scope of the practice of architecture,
7 professional engineering, structural engineering, or land
8 surveying, as defined in the Illinois Architecture Practice
9 Act of 1989, the Professional Engineering Practice Act of
10 1989, the Illinois Professional Land Surveyor Act of 1989, or
11 the Illinois Structural Engineering Practice Act of 1989.

12 Section 58. Disadvantaged business enterprise liaison. The
13 Office of Business and Workforce Diversity established under
14 Section 2705-593 of the Department of Transportation Law of
15 the Civil Administrative Code of Illinois shall retain a staff
16 member or consultant to act as a liaison of for outreach,
17 monitoring, and compliance with the Department's Disadvantaged
18 Business Enterprise Program consistent with all applicable
19 federal rules governing the disadvantaged business enterprise
20 process. The Department shall also determine attainable goals
21 for projects using the new project delivery procurement
22 methods, in accordance with federal regulations. The
23 Department shall publish a quarterly report regarding projects
24 sourced through new procurements methods that includes
25 utilization goals and utilization achieved.

1 Section 60. Acquisition of property and related
2 agreements. The Transportation Agency may exercise any and all
3 powers of condemnation or eminent domain, including quick-take
4 powers, to acquire lands or estates or interests in land for a
5 transportation facility under this Act to the extent the
6 Transportation Agency finds that the action serves the public
7 purpose of this Act and deems the action appropriate in the
8 exercise of its powers under this Act. In addition, the
9 Transportation Agency and a design-builder or Construction
10 Manager/General Contractor may enter into leases, licenses,
11 easements, and other grants of property interests that the
12 Transportation Agency determines are necessary to deliver a
13 transportation facility under this Act.

14 Section 65. Federal requirements. In the procurement of
15 design-build contracts and Construction Manager/General
16 Contractor contracts, the Transportation Agency shall, to the
17 extent applicable, comply with federal law and regulations and
18 take all necessary steps to adapt its rules, policies, and
19 procedures to remain eligible for federal aid.

20 Section 70. Powers. The powers granted to the
21 Transportation Agency under this Act, including the power to
22 procure and enter into design-build contracts and Construction
23 Manager/General Contractor contracts, shall be liberally

1 construed to accomplish its purpose, are in addition to any
2 existing powers of the Transportation Agency, and shall not
3 affect or impair any other powers authorized under applicable
4 law, except as otherwise provided for in this Act.

5 Section 75. Rulemaking.

6 (a) The Illinois Administrative Procedure Act applies to
7 all administrative rules and procedures of the Transportation
8 Agency under this Act, except that nothing in this Act shall be
9 construed to render any prequalification or other
10 responsibility criteria as a "license" or "licensing" under
11 that Act.

12 (b) The appropriate chief procurement officer, in
13 consultation with the Transportation Agency, may adopt rules
14 to carry out the provisions of this Act.

15 Section 80. Repeal. This Act is repealed on July 1, 2032.

16 Section 905. The Department of Transportation Law of the
17 Civil Administrative Code of Illinois is amended by adding
18 Section 2705-233 as follows:

19 (20 ILCS 2705/2705-233 new)

20 Sec. 2705-233. Innovations for Transportation
21 Infrastructure Act. The Department may exercise all powers
22 granted to it under the Innovations for Transportation

1 Infrastructure Act, including, but not limited to, the power
2 to enter into all contracts or agreements necessary or
3 incidental to the performance of its powers under that Act,
4 and powers related to any transportation facility implemented
5 under that Act.

6 Section 910. The Illinois Finance Authority Act is amended
7 by adding Section 825-108 as follows:

8 (20 ILCS 3501/825-108 new)

9 Sec. 825-108. Transportation project financing. For the
10 purpose of financing a transportation facility undertaken
11 under the Innovations for Transportation Infrastructure Act,
12 the Authority may apply for an allocation of tax-exempt bond
13 financing authorization provided by subsection (m) of Section
14 142 of the United States Internal Revenue Code, as well as
15 financing available under any other federal law or program.

16 Section 915. The Illinois Procurement Code is amended by
17 adding Section 1-10.5 as follows:

18 (30 ILCS 500/1-10.5 new)

19 Sec. 1-10.5. Alternative Technical Concepts.

20 (a) For the purposes of this Section, "Alternative
21 Technical Concepts" and "design-bid-build project delivery
22 method" have the meanings ascribed to those terms in the

1 Innovations for Transportation Infrastructure Act.

2 (b) Notwithstanding subsection (b) of Section 1-10 of this
3 Code, the Department of Transportation may allow bidders and
4 proposers to submit Alternative Technical Concepts in their
5 bids and proposals, if the Department determines that the
6 Alternative Technical Concepts provide an equal or better
7 solution than the underlying technical requirements applicable
8 to the work. Notwithstanding the foregoing, for projects the
9 Department delivers using the design-bid-build project
10 delivery method, the Department shall use the Alternative
11 Technical Concepts process for no more than 3 projects per
12 year. If the Department allows bidders or proposers for a
13 particular contract to submit Alternative Technical Concepts,
14 the Department shall describe the process for submission and
15 evaluation of Alternative Technical Concepts in the
16 procurement documents for that contract, including the
17 potential use of confidential meetings and the exchange of
18 confidential information with bidders and proposers to review
19 and discuss potential or proposed Alternative Technical
20 Concepts.

21 Section 920. The Public Construction Bond Act is amended
22 by adding Section 1.9 as follows:

23 (30 ILCS 550/1.9 new)

24 Sec. 1.9. Design-build contracts and Construction

1 Manager/General Contractor contracts. This Act applies to any
2 design-build contract or Construction Manager/General
3 Contractor contract entered into under the Innovations for
4 Transportation Infrastructure Act.

5 Section 925. The Employment of Illinois Workers on Public
6 Works Act is amended by adding Section 2.8 as follows:

7 (30 ILCS 570/2.8 new)

8 Sec. 2.8. Design-build and Construction Manager/General
9 Contractor contracts. This Act applies to any design-build
10 contracts and Construction Manager/General Contractor
11 contracts entered into under the Innovations for
12 Transportation Infrastructure Act.

13 Section 930. The Business Enterprise for Minorities,
14 Women, and Persons with Disabilities Act is amended by adding
15 Section 2.8 as follows:

16 (30 ILCS 575/2.8 new)

17 Sec. 2.8. Design-build and Construction Manager/General
18 Contractor contracts. This Act applies to any design-build
19 contracts and Construction Manager/General Contractor
20 contracts entered into under the Innovations for
21 Transportation Infrastructure Act.

1 Section 935. The Toll Highway Act is amended by adding
2 Section 11.2 as follows:

3 (605 ILCS 10/11.2 new)

4 Sec. 11.2. Innovations for Transportation Infrastructure
5 Act. The Authority may exercise all powers granted to it under
6 the Innovations for Transportation Infrastructure Act,
7 including, but not limited to, the power to enter into all
8 contracts or agreements necessary to perform its powers under
9 that Act, and any powers related to a transportation facility
10 implemented under that Act.

11 Section 940. The Eminent Domain Act is amended by adding
12 Section 15-5-48 as follows:

13 (735 ILCS 30/15-5-48 new)

14 Sec. 15-5-48. Eminent domain powers in new Acts. The
15 following provisions of law may include express grants of the
16 power to acquire property by condemnation or eminent domain:

17 The Innovations for Transportation Infrastructure Act; for
18 the purposes of constructing a transportation facility under
19 the Act.

20 Section 945. The Prevailing Wage Act is amended by
21 changing Section 2 as follows:

1 (820 ILCS 130/2) (from Ch. 48, par. 39s-2)

2 Sec. 2. This Act applies to the wages of laborers,
3 mechanics and other workers employed in any public works, as
4 hereinafter defined, by any public body and to anyone under
5 contracts for public works. This includes any maintenance,
6 repair, assembly, or disassembly work performed on equipment
7 whether owned, leased, or rented.

8 As used in this Act, unless the context indicates
9 otherwise:

10 "Public works" means all fixed works constructed or
11 demolished by any public body, or paid for wholly or in part
12 out of public funds. "Public works" as defined herein includes
13 all projects financed in whole or in part with bonds, grants,
14 loans, or other funds made available by or through the State or
15 any of its political subdivisions, including but not limited
16 to: bonds issued under the Industrial Project Revenue Bond Act
17 (Article 11, Division 74 of the Illinois Municipal Code), the
18 Industrial Building Revenue Bond Act, the Illinois Finance
19 Authority Act, the Illinois Sports Facilities Authority Act,
20 or the Build Illinois Bond Act; loans or other funds made
21 available pursuant to the Build Illinois Act; loans or other
22 funds made available pursuant to the Riverfront Development
23 Fund under Section 10-15 of the River Edge Redevelopment Zone
24 Act; or funds from the Fund for Illinois' Future under Section
25 6z-47 of the State Finance Act, funds for school construction
26 under Section 5 of the General Obligation Bond Act, funds

1 authorized under Section 3 of the School Construction Bond
2 Act, funds for school infrastructure under Section 6z-45 of
3 the State Finance Act, and funds for transportation purposes
4 under Section 4 of the General Obligation Bond Act. "Public
5 works" also includes (i) all projects financed in whole or in
6 part with funds from the Environmental Protection Agency under
7 the Illinois Renewable Fuels Development Program Act for which
8 there is no project labor agreement; (ii) all work performed
9 pursuant to a public private agreement under the Public
10 Private Agreements for the Illiana Expressway Act or the
11 Public-Private Agreements for the South Suburban Airport Act;
12 ~~and~~ (iii) all projects undertaken under a public-private
13 agreement under the Public-Private Partnerships for
14 Transportation Act; and (iv) all transportation facilities
15 undertaken under a design-build contract or a Construction
16 Manager/General Contractor contract under the Innovations for
17 Transportation Infrastructure Act. "Public works" also
18 includes all projects at leased facility property used for
19 airport purposes under Section 35 of the Local Government
20 Facility Lease Act. "Public works" also includes the
21 construction of a new wind power facility by a business
22 designated as a High Impact Business under Section
23 5.5(a)(3)(E) and the construction of a new utility-scale solar
24 power facility by a business designated as a High Impact
25 Business under Section 5.5(a)(3)(E-5) of the Illinois
26 Enterprise Zone Act. "Public works" also includes electric

1 vehicle charging station projects financed pursuant to the
2 Electric Vehicle Act and renewable energy projects required to
3 pay the prevailing wage pursuant to the Illinois Power Agency
4 Act. "Public works" does not include work done directly by any
5 public utility company, whether or not done under public
6 supervision or direction, or paid for wholly or in part out of
7 public funds. "Public works" also includes construction
8 projects performed by a third party contracted by any public
9 utility, as described in subsection (a) of Section 2.1, in
10 public rights-of-way, as defined in Section 21-201 of the
11 Public Utilities Act, whether or not done under public
12 supervision or direction, or paid for wholly or in part out of
13 public funds. "Public works" also includes construction
14 projects that exceed 15 aggregate miles of new fiber optic
15 cable, performed by a third party contracted by any public
16 utility, as described in subsection (b) of Section 2.1, in
17 public rights-of-way, as defined in Section 21-201 of the
18 Public Utilities Act, whether or not done under public
19 supervision or direction, or paid for wholly or in part out of
20 public funds. "Public works" also includes any corrective
21 action performed pursuant to Title XVI of the Environmental
22 Protection Act for which payment from the Underground Storage
23 Tank Fund is requested. "Public works" does not include
24 projects undertaken by the owner at an owner-occupied
25 single-family residence or at an owner-occupied unit of a
26 multi-family residence. "Public works" does not include work

1 performed for soil and water conservation purposes on
2 agricultural lands, whether or not done under public
3 supervision or paid for wholly or in part out of public funds,
4 done directly by an owner or person who has legal control of
5 those lands.

6 "Construction" means all work on public works involving
7 laborers, workers or mechanics. This includes any maintenance,
8 repair, assembly, or disassembly work performed on equipment
9 whether owned, leased, or rented.

10 "Locality" means the county where the physical work upon
11 public works is performed, except (1) that if there is not
12 available in the county a sufficient number of competent
13 skilled laborers, workers and mechanics to construct the
14 public works efficiently and properly, "locality" includes any
15 other county nearest the one in which the work or construction
16 is to be performed and from which such persons may be obtained
17 in sufficient numbers to perform the work and (2) that, with
18 respect to contracts for highway work with the Department of
19 Transportation of this State, "locality" may at the discretion
20 of the Secretary of the Department of Transportation be
21 construed to include two or more adjacent counties from which
22 workers may be accessible for work on such construction.

23 "Public body" means the State or any officer, board or
24 commission of the State or any political subdivision or
25 department thereof, or any institution supported in whole or
26 in part by public funds, and includes every county, city,

1 town, village, township, school district, irrigation, utility,
2 reclamation improvement or other district and every other
3 political subdivision, district or municipality of the state
4 whether such political subdivision, municipality or district
5 operates under a special charter or not.

6 "Labor organization" means an organization that is the
7 exclusive representative of an employer's employees recognized
8 or certified pursuant to the National Labor Relations Act.

9 The terms "general prevailing rate of hourly wages",
10 "general prevailing rate of wages" or "prevailing rate of
11 wages" when used in this Act mean the hourly cash wages plus
12 annualized fringe benefits for training and apprenticeship
13 programs approved by the U.S. Department of Labor, Bureau of
14 Apprenticeship and Training, health and welfare, insurance,
15 vacations and pensions paid generally, in the locality in
16 which the work is being performed, to employees engaged in
17 work of a similar character on public works.

18 (Source: P.A. 102-9, eff. 1-1-22; 102-444, eff. 8-20-21;
19 102-673, eff. 11-30-21; revised 12-9-21.)

20 Section 997. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.

22 Section 999. Effective date. This Act takes effect upon
23 becoming law."